

REMARKS

Applicants submit claim 6, and claim 5 has been canceled. Claims 1-4 and 6 are now pending in the application. Applicants amend claim 1 for further clarification, amend claims 2 and 4 to depend from claim 1, and submit claim 6 to round out the scope of the invention—incorporating features that correspond to those of claim 4. Applicants refer to page 1, lines 29-30, page 7, lines 30-36, and page 10, lines 7-12 of specification for support for the claimed invention. No new matter has been added.

Claims 1 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. 2002/0172205 to Tagore-Brage et al. in view of U.S. Patent No. 6,628,613 to Joung et al.; and claims 2-3 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,061,864 to van Everdingen. Applicants amend claims 2 and 4 to depend from claim 1, and amend claim 1 in a good faith effort to further clarify the invention as distinguished from the cited references, and respectfully traverse the rejections.

In response to Applicants' previous remarks, the Examiner cited, from the MPEP, a proposed response to an applicant's rebuttal "ARGUING THAT PRIOR ART DEVICES ARE NOT PHYSICALLY COMBINABLE." Page 6, lines 12-18 of the Office Action—see also MPEP 2145 (III).

Applicants respectfully submit that the Examiner did not properly address the Applicants' remarks in that Applicants' did not present any arguments "that prior art devices are not physically combinable." Instead, Applicants merely pointed out that the cited references, as they were relied upon by the Examiner, did not disclose or suggest to one skilled in the art the features of the claimed invention, even assuming, arguendo, that a combination of the references would have been obvious to one skilled in the art at the time the claimed invention was made. In other words, Applicants properly demonstrated that "the combined teachings of the references would [not] have suggested to those of ordinary skill in

the art" the features of the claimed invention, absent improper hindsight from the claimed invention itself.

Again, the Examiner relied upon the description in Tagore-Brage et al. of stopping only lower priority data in combination with the description of receiving an additional PAUSE frame in Joung et al. as alleged suggestion of the claimed invention. Applicants respectfully point out to the Examiner that the cited portion of Tagore-Brage et al. only includes a brief description of an alternative of stopping only lower priority data while maintaining higher priority data flow. And the cited portions of Joung et al. only include description of extending a PAUSE time when receiving an additional PAUSE frame. Please see, e.g., Fig. 4 of Joung et al. As such, even assuming, arguendo, that it would have been obvious to one skilled in the art at the time the claimed invention was made to combine Tagore-Brage et al. and Joung et al., such a combination would have, at most, suggested maintaining higher priority data flow and extending the PAUSE time for lower priority data when receiving an additional PAUSE frame. Such a combination would still have failed to disclose or suggest the claimed features of restricting different traffic flow depending on whether a PAUSE frame is received during a PAUSE time or received at a time other than the PAUSE time—neither reference, as cited and relied upon by the Examiner, includes any disclosure or suggestion for such features.

In other words, even assuming, arguendo, that it would have been obvious to one skilled in the art at the time the claimed invention was made to combine Tagore-Brage et al. and Joung et al., such a combination would still have failed to disclose or suggest,

“[a] congestion controller for an Ethernet switch at a reception side of a PAUSE frame, comprising
a plurality of transmission queues which have different priorities,
receiving means for receiving the PAUSE frame
including a parameter field in which a timer value of PAUSE time is set,

restriction means for restricting transmission traffic from the transmission queues by the received PAUSE frame, wherein

the restriction means restricts (i) the transmission traffic from a transmission queue of a lowest priority by the PAUSE frame received at a time other than the PAUSE time, and restricts (ii) the transmission traffic from the transmission queue of a higher priority, by the PAUSE frame received during the PAUSE time," as recited in claim 1. (Emphasis added)

Accordingly, Applicants respectfully submit that claim 1, together with claims 4 and 6 dependent therefrom, is patentable over Tagore-Brage et al. and Joung et al., separately and in combination, for at least the foregoing reasons. The Examiner cited van Everdingen to specifically address the features recited in claims 2-3, which also depend from claim 1. As such, a further combination with this reference would still have failed to cure the above-described deficiencies of Tagore-Brage et al. and Joung et al. with respect to claim 1, even assuming, arguendo, that such a further combination would have been obvious to one skilled in the art at the time the claimed invention was made. Accordingly, Applicants respectfully submit that claims 2-3 are patentable over the cited references for at least the foregoing reasons.

In view of the remarks set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,

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